PRIVATE PRACTICE SECTION, APTA

American Physical Therapy Association

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May 16, 2011

The Honorable Wally Herger
The Honorable Pete Stark
Subcommittee on Health
House Ways and Means Committee
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Herger and Ranking Member Stark:

On behalf of the Private Practice Section (PPS) of the American Physical Therapy Association (APTA), and its over 4000 members who function as small businesses, we are pleased to offer this statement to the Health Subcommittee of the House Committee on Ways and Means germane to the May 12 hearing on the topic of the Medicare payment system.

PPS members provide a valuable service to communities across the nation and they do so in a convenient, cost-effective manner. But as is typical for small businesses, narrow margins are jeopardized when a significant sector of its market cuts reimbursement without regard to the value of the service provided. Moreover, when such an action is unpredictable and is taken by an influential payer such as Medicare, the effect is to negatively influence the business environment and create an untenable situation for the providers. More importantly, the Medicare beneficiaries are left in a vulnerable position, unable to depend on the access to convenient, cost-effective, high-quality care to which they have become accustomed.

Physical therapists in private practice provide critical health care services to beneficiaries under Medicare Part B to enable individuals to return to their highest functional potential. Yet, PTs in private practice will be among the professional clinicians who will see Medicare reimbursement rates cut by 29 percent on January 1, 2012, unless Congress takes some important and necessary action.

As the Committee on Ways and Means considers legislative options for reforming Medicare payment policies, PPS is pleased to offer guidance and suggestions in the following categories:

- Effects on the PT providers as small businesses
- Effects on the patient
- Effects on the Medicare system

SGR Repeal
A 29 percent cut in Medicare reimbursement, if allowed to take effect next year, would have a crippling impact on private practice physical therapists and their small businesses. Since many private insurers benchmark their payment rates to Medicare, the impact of such a significant cut would be felt far beyond the Medicare community. The recent history of extending a minimal rate increase for a few months or even a year is an unwise and detrimental way to run an insurance program for 47 million beneficiaries. It is time for Congress to repeal the flawed and dysfunctional formula known as the sustainable growth rate (SGR) which has created an unpredictable and untenable business environment for Medicare Part B providers.

In doing so, PPS would urge Congress to consider placing more emphasis on the value of the service provided including the resultant effect of the care on the patient.

Electronic Health Records
Congruent with this notion is the need for Congress to expand the incentives for providers to establish electronic health records. Nonphysician providers such as independent physical therapists were not included in the federal programs that encourage and reward the adoption of health information technology. Yet, our members provide an important and valuable service that should be coordinated and communicated electronically. What sense does it make to encourage an information superhighway, but only allowing a certain select type of car to drive on it? The sooner Congress and the administration can set the standards for an interoperable electronic health records the sooner waste and redundancy can be wrung out of the system.

Private Contracting
Section 4507 of the BBA of 1997 included a provision allowing physicians and other selected providers of Part B services to opt-out of the Medicare program, meaning they can collect out-of-pocket payments from Medicare beneficiaries if certain requirements for opting-out are met But this provision was only authorized for physicians, osteopaths, and selected non-physician providers (clinical psychologists, clinical social workers, physician assistants, nurse practitioners, clinical nurse specialists, certified registered nurse anesthetists, certified nurse mid-wives) in the BBA of 1997. Subsequently, the Medicare Prescription Drug Improvement, and Modernization Act of 2003 (MMA) extended private contracting to podiatrists, dentists, and optometrists, effective December 2003. Physical therapists do not currently have the ability to opt-out because they are not included in the statutory language permitting same.

PPS/APTA recommends Congress amend the statute to allow a physical therapist to collect out of pocket from a Medicare beneficiary. Such an amendment would be beneficial to PPS members, afford beneficiaries the freedom of choice they deserve, without resulting in any greater expenditure for the Medicare program.

PPS/APTA recommends That Section 1802(b)(5)(B) of the Social Security Act be amended as follows:

> ***Inclusion of physical therapists under private contracting authority.***
> *Section 1802(b)(5)(B) (42 U.S.C. 1395a(b)(5)(C)) is amended by striking ``the term practitioner has the meaning given such term by section 1842(b)(18)(C)" and inserting "In this subparagraph, the term "practitioner" means an individual defines at section 1842(b)(18)(C) or an individual who is qualified as a physical therapist."*

Therapy Cap Repeal

Congress can and should take a related step to correct an injustice in the Medicare system that punishes the beneficiaries who are the most impaired and disabled. The arbitrary, per beneficiary annual therapy caps were authorized as part of the Balanced Budget Act of 1997. Since their scheduled implementation date of January 1, 1999, Congress has intervened numerous times to place a moratorium on therapy caps or, since 2005, extended a broad-based exceptions process. These caps were intended to be temporary until "an alternative payment method" could be developed. But such an alternative has not materialized in 14 years. Yet one is possible if Congress and the Centers for Medicare and Medicaid Services (CMS) would commit to collecting the necessary descriptive data upon which such an alternative could be predicated.

A limited (and targeted) extension of exceptions process for 2012, 2013, and 2014 combined with instructions to CMS to grant the therapy cap exception for care delivered in any setting that is collecting and reporting functional outcomes data would result in a database containing sufficiently robust information to design the alternative payment method envisioned by the 1997 BBA. Most importantly, such a payment model would not be based on an arbitrary limit but rather on the amount and type of care to achieve the desired optimal outcome.

Implementation of the above policy need not be costly. In fact, when done thoughtfully and fairly, it may even generate modest savings. PPS is eager to work with the Committee as well as CMS in advancing this short-term transition that can ultimately result in the therapy cap issue being put behind us.

Curbing Overutilization of Therapy

Currently under Medicare Part B there are various ways to bill for services. One policy in particular -- the Stark II in-office ancillary services exception to the self-referral law -- carries a proven propensity for overutilization. PPS believes, and evidence shows, that elimination of this exception could provide potential cost-savings and improve the integrity of the services delivered and paid for by the Medicare program. The Office of the Inspector General of the United States Department of Health and Human Services has continued to identify a high rate (78 to 91 percent) of inappropriate billing of physical therapy services billed incident to a physician's professional services. Elimination of

these practices must be addressed in an effort to provide a sustainable payment system for providers that serve the Medicare Part B program and ensure we are paying for only services delivered appropriately by qualified professionals of that discipline.

Conclusion

The above-discussed issues have beneficial effects on the PT providers, the patient, and the Medicare system in the following ways. Repealing the SGR and allowing private contracting have major impacts on the provider but secondary benefits for the patient. The therapy cap repeal (extending the exceptions process) is primarily a Medicare beneficiary issue. Enabling nonphysician providers to access health information technology is beneficial to both PTs and their patients, and to the degree to which it creates efficiencies, the Medicare program. The benefits of curbing overutilization inure specifically to the Medicare program.

On behalf of the Private Practice Section of APTA, thank you for your continued efforts to create a more stable, predictable and effective Medicare payment system.

Sincerely,

Tom DiAngelis, PT, DPT
President
Private Practice Section / APTA